Meeting Minutes of
The Governor's Council on Behavioral Health
8:30 A.M., Thursday, December 13, 2007

The Governor's Council on Behavioral Health met at 8:30 a.m. on Thursday, December 13, 2007, in Barry Hall's Conference Room 126, 14 Harrington Road, Cranston, Rhode Island.

Members Present: Richard Leclerc, Chair; Stephanie Culhane; Sandra DelSesto; Scotti DiDonato; Mark Fields; James Gillen; Mitch Henderson; Karen Kanatzar; Peter Mendoza; Neil Corkery; Reed Cosper; Elizabeth Earls; and Representative Bruce Long.

Ex-Officio
Members Present: Craig Stenning, Department of Mental Health, Retardation and Hospitals (MHRH); Carol Fox, Sandy Woods, and Winsome Stone, Department of Children, Youth and Families (DCYF); Fred Friedman, Department of Corrections (DOC): Jane Morgan, Esq., Department of Elderly Affairs (DEA); Colleen Polselli, Department of Health; Frank Spnelli, Sharon Kernan, Department of Human Services (DHS); and Maureen Apperson, Mental Health Advocate's Office.

Staff: Corinna Roy, Charles Williams, Mary Ann Nassa, Richard Sabo, and Elena Nicolella.

Guests: Melissa Siple and Lisa Clark of Reckitt Benckiser.

Once a quorum was established, the Chair, Richard Leclerc, called the meeting to order at 8:35 a.m. After introductions were conducted, Richard entertained a motion to accept the Minutes of November 13, 2007. Neil Corkery motioned to approve the minutes and Scotti DeDonato seconded the motion. All were in favor, and the minutes were approved as written and submitted.

BLOCK GRANT AND YOUTH INVOLVEMENT AND INPUT SUBCOMMITTEES

Corinna Roy stated that a Block Grant Subcommittee has been set up with its first meeting scheduled for 10:00 a.m., December 21, 2007 in Room 226 of the Barry Hall Building.

Corinna stated that the Youth Involvement Subcommittee is temporarily on hold while seeking an appropriate level of funding. Janet Anderson of DCYF has stated that some funding may be available through her agency, but is not clear how much. MHRH, which is the Governor's Council funding source, has nothing available and approval to move fiscal agents toward endorsing stipends or funding for refreshments is unlikely.

MEDICAID REHABILITATION OPTION

Richard introduced Elena Nicolella to discuss the Center for Mental Health Services (CMS) terms for Medicare and Medicaid Services Proposed Rule on Rehabilitative Services. Joining her in the discussion was Sharon Kernan, Assistant Administrator, Family & Children Services, and Center for Child and Family Health, at DHS. Elena gave a general overview of the Proposed Rule and MHRH's interpretation of the impact of the Proposed Rule on adult's behavioral health services, with Sharon providing comments on the services provided to children.

Elena distributed a summary of the comments regarding the Proposed Rule ***(See Attachment I, Proposed Rule: Medicaid Rehabilitative Services)*** along with the comments that MHRH provided to CMS on the Proposed Rule ***(See Attachment II, MHRH Comments on Specific Items in Proposed Rule).***

Elena stated that Medicaid is jointly financed by the state and federal governments. The federal government sets up basic requirements that states that want to have Medicaid programs need to follow.

Beyond the basic structure of the Federal Medicaid program, states have many options in the way they define the persons who are eligible for receiving Medicaid services, but also services that the state provides under the Medicaid program. The rules that the Federal Government sets up are in the Code of Federal Regulations and in the document there is a stipulation for a Medicaid State Plan, which describes each individual state's Medicaid design.

In the Code of Federal Regulations there is an optional Medicaid service called Rehabilitative Services defined as including *"…any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level."* Elena stated that it is up to the individual state to define who the providers are, including practitioners of the healing arts.

Historically, CMS has not given guidance on what falls under Rehabilitative Services. Therefore, over the years states have added many services under Rehabilitative Services, and CMS recognized that the expenditures under this were rapidly increasing. They sent out the Office of Inspector General (OIG) to look at why those costs were increasing and found in some of the audits they conducted that some of the services provided under the Rehabilitative Services authority may not be appropriate or should be under the purview of either the state child welfare organization, the state department of education or the juvenile justice system. Another area of potential inappropriate claiming was the eligibility of the service provider. They did not find that everyone was a licensed practitioner of the healing arts.

At the same time of the OIG investigations, CMS received State Plan amendments related to payment methodologies. CMS found that states wanted to pay for services under the Rehabilitation Option in a bundled way and disapproved that payment methodology. The Proposed Rule was issued following the OIG audits and the state plan amendment disapprovals. After CMS issued the Proposed Rule, there was a period for comments and that comment period ended on October 12, 2007, and now CMS is in the process of reviewing all the comments from states and other interested stakeholders and may or may not issue a final rule.

Elena explained that her presentation was about the analysis that MHRH has prepared on the potential impact of this rule if it becomes final; and if it does not become final, there will be no immediate change. She stated that the Proposed Rule seeks to clarify the definition and does not seek to change the definition that is in the Federal Regulations. CMS states that in the Rule, they want to clarify who is an appropriate provider of the service. Therefore, states cannot continue to reimburse for services to providers who do not meet the licensed practitioner or physician provider requirements in the State Plan that those providers claim. CMS also clarified the definition of a service in the Proposed Rule.

The question regarding the difference between habilitative and rehabilitative service was asked. Elena stated that the way CMS differentiates the two is that rehabilitative services are services that assist a person to restore them to their maximum prior functional level, whereas habilitative services are services that assist a person in learning new functionality. She stated that this is why services to individuals with developmental disabilities are considered habilitative services. In the area of behavioral health, it is a much more difficult cut to make. Every proposed rule has a preamble where CMS tries to explain what they are doing with the Proposed Rule. Elena interprets in the Proposed Rule preamble that CMS explicitly continues to support states provision of behavioral health services under the rehab option. Rhode Island does claim habilitative services under the rehab option which affects about 250 individuals in the developmental disabilities (DD) arena. Elena stated that it comes down to being an administrative fix and the State does not intend to cease providing services to those 250 individuals. It is just finding

another authority, and CMS has agreed to help identify that other authority. Craig Stenning added that it is a small portion of the DD population that is served by this option.

Richard Leclerc stated that earlier on CMS made a change where, for example, if someone was coming out of the hospital for psychiatric services and was getting rehabilitated for the level of functioning prior to the hospitalization, that was considered rehabilitative; but after that and in order to maintain them at a that level and prevent them from relapsing back, it was considered habilitative. Therefore, that service could not be billed under this option. Richard asked if that distinction is being made now. Elena stated that initially that was the message that CMS was sending; but in later conference calls and presentations, they exhibited much more sensitivity to the whole notion of maintaining a person so that a crisis episode would not occur. Elena clarified that it the purpose of the service that matters. For example, with kids, if the service is solely recreational in nature, Medicaid funding is not available; but if there is a rehabilitative goal associated with the recreational activity, then can it can be rehabilitative. CMS states in the Proposed Rule that it is really looking at the purposes of the service and if the purpose is restorative, then it can be rehabilitative. In the comments to CMS, MHRH, thanks to Ron Tremper's insights, asked CMS to expand that notion of restorative services.

The third area that CMS included in the Proposed Rule was that documentation needs to improve. Therefore, there are specific requirements around having individual rehabilitative plans. Reed Cosper stated that nationwide, Rhode Island had very adequate documentation.

Elena stated that MHRH anticipates the impact of the Proposed Rule as administrative. She anticipates that they will have to work with DHS to submit a State Plan Amendment to remove the habilitative services and find another authority to cover them. She believes that the services currently provided under the Rehabilitative Option in Rhode Island are in compliance with current rules as well as the Proposed Rule. She stated that the only outlier is payment methodology. Rhode Island, as well as other states, pays for some of the services in a bundled methodology and other states have been cited or told they can no long do that. CMS has not issued any formal guidance regarding that issue; therefore, it is not clear what direction they will take.

Elena introduced Sharon Kernan of DHS who distributed copies of the comments on the Proposed Rule that were submitted by DHS ***(See Attachment III, HHS Comments on Specific Items in Proposed Rule).*** Sharon Kernan stated that she was present to comment on the feelings of DHS on the Rehab Option and how it may affect services for children. She stated that at DHS there is some concern about services that DHS has traditionally sponsored and promoted that are now funded under the Rehab Option, and there are also many DCYF services including residential services that are funded under this option. CMS has raised the concern that services that are really child welfare services should not be funded through Medicaid. DHS is committed to maintaining as much funding as they possibly can in the system and maintaining services for children. They do have an advantage on the children's side under Early Periodic Screening, Diagnosis and Treatment (EPSDT) which is a provision in Medicaid law that states that any service that is medically necessary must be provided to a child if diagnosed under an EPSDT screen. An EPSDT screen is a visit with a pediatrician or another type of licensed provider qualified to determine if a service is medially necessary. However, under the EPSDT provisions, if the Proposed Rule goes through, they would see if the services now funded under the rehab option could continue under the new rules and definitions of rehab. DHS would work with providers to bring them into compliance. She stated that there are potential changes that would have to be individually discussed and reviewed. If the service clearly could not be made to conform to the new requirements, DHS would look to another authority to provide the service.

Jane Morgan asked which children who are funded under the Rehab Option may be impacted by the Proposed Rule. Sharon stated that it is not the children that are funded under the Rehab Option, it is the services. Therefore, the services that are funded under the Rehab Option, which are primarily services provided under the DCYF umbrella include residential services; some juvenile justice services; some other services that are funded for children in DCYF custody; also certain services such as lead centers, lead investigations and some other behavioral health services; and for some services for persons with developmental disabilities.

Frank Spinelli added that all of the information given today is based on current conversations that occurred to date. Frank stated that when this rule goes to its final state, it would not surprise DHS, if the direction changed.

It was asked is the function of screening for substance abuse issues is part of an EPSDT authorized service. Sharon stated that they are working at DHS to revise and update the EPSDT schedule which informs all the providers what they have do at every visit to be in conformance; and screening adolescents in that arena is all part of the EPSDT schedule. If it is determined that they have a serious problem, there would be referrals that would be made to substance abuse providers but she is not sure whether those services are covered under rehab or another authority in Medicaid.

Elena stated that nothing may change, but if something does happen, there will be at least a two-year window specific to DD rehabilitative services.

Richard Leclerc commented that it appears that under DCYF or DHS there is a fair amount of caution to what if anything will ever be covered for Child Welfare that is currently being covered regardless of whether this rule passes or not. The effect of that could be upwards of 20 to 30 million dollars in lost revenue in the state for children's residential programs. Sharon stated that it is a big issue happening separate from this issue and Medicaid is committed to ensuring that we continue to pay for all the medically necessary services. Reed stated that is true, but there will be no more funding for room and board. Sharon stated that room and board would need to be paid for with other funds.

Sharon stated that CMS has indicated that residential room and board should not be covered. She stated there are many factors right now that contribute to this, i.e. – the state budget, the CMS concerns that are not part of the rehab option that has to do with what is being paid for with Medicaid funds, and rules throughout Medicaid that go beyond rehab and are directed at all of Medicaid.

Bruce Long asked if there is a necessary medical procedure that can only be done out of state, how would the services be provided without providing room and board? Sharon stated that theoretically the room and board is a DCYF responsibility, and the medically necessary service, whether it is provided in state or out-of-state would be a Medicaid responsibility and would continue to be paid for.

Richard asked that Elena and Sharon keep the Council informed with regards to any developments that may occur.

Richard stated that he understands that the feds issued an interim final ruling on the targeted case management. He asked Elena if that has an impact on the service delivery system in Rhode Island. Elena stated that for adult behavioral health services, very little is claimed under the targeted case management authority. She stated that she will look into it and report back to the Council. Frank Spinelli stated that it has the potential to affect children services, but it is still too early to tell.

BLOCK GRANT IMPLEMENTATION REPORT RATIFICATION LETTER

Corinna Roy distributed a copy of the cover letter that accompanied the Block Grant Implementation Report ***(See Attachment IV – Cover Letter to Louellen M. Rice - Block Grant Implementation Report).*** Corinna Roy stated that an access code was e-mailed, but was distributed before all the data had been submitted because of loss of staff at MHRH. She reported that feedback was received from reviewers and updates were made to the Implementation Report based on those comments. Richard Leclerc submitted a letter which is required to be sent to SAMHSA by December 1st for the submission that approved the implementation report on behalf of the Council. She welcomed any additional comments from council members to be sent to croy@mhrh.ri.gov and included in an upload at a later date.

Neil Corkery made a motion to ratify the letter sent to SAMHSA and Liz Earls seconded the motion. All were in favor, the motion carried and the letter was approved as submitted.

UPDATES FROM MHRH

Craig Stenning reported that on Monday, December 10th the ribbon cutting and opening of the new Caritas House occurred. It is a 16-bed facility for adolescent women. In addition, the old Eastman House moved to a newly renovated facility in Pawtucket which was formerly the old Caritas House.

Craig stated that a conference call with the federal government was occurring at this time regarding the Access to Recovery (ATR) grant. These conference calls have been occurring on a weekly basis. He reported that the program is moving along rapidly in regards to its design. The rate setting for the various levels of services is near completion. The applications for both treatment providers and recovery organizations have been finalized; the criterion for the recovery coaches is also near completion and an assessment tool has been selected. Craig stated that this somewhat of a pilot program which will be used to implement many of the changes across the entire system in upcoming years. The rollout target date is February 1, 2008, but they are looking more realistically at March of 2008 mainly in order to get the necessary RFIs through the State Purchasing Office. Craig announced that a number of presentations for various groups have been scheduled, and the RFIs will be rolled out after the holidays.

Bruce Long reported that some providers have indicated to him that they may not wish to subject themselves to all of the required paperwork. Craig mentioned that the rates will be enhanced for that reason making them the best State rates available.

Craig announced that at the same time MHRH is implementing the ACI program which provides treatment for individuals coming out of the ACI who are being paroled with the only obstacle for release being the availability of community-based substance abuse treatment. The RFI is posted on the State's Purchasing Office website. He reported that one proposal has been received and he anticipates many more.

Craig reported that the Department's 2009 budget has been submitted, and he looks forward in the near future to discuss some of the initiatives with the community providers. The 2008 budget initiatives are in the process of implementation and from a recent article in the Providence Journal the State is now dealing with an additional 150 million dollar deficit that has been identified. Craig stated that he has not received any instructions in regards to MHRH's involvement in those cuts. Craig reported that at this point the Division's budget for 2008 is in good shape.

Craig reported that the Screen Brief Intervention Referral and Treatment (SBIRT) program is an evidenced-based initiative on behalf of SAMSHA and the White House Office on Drug Control Policy. It is based upon extensive research that indicates that brief interventions in non-clinical or non-treatment

settings based on responses to a series of questions about substance abuse can be effective either in getting individuals to go into treatment or if their use is fairly new or sporadic can be effective in curtailing that use. Craig reported they have been encouraged by both the White House and Congressman Kennedy's office to join the other states that have already initiated this procedure. He reported that discussions with several hospitals in Rhode Island have been conducted. He added that there are two different ways to approach it: there are two codes which would cover this type of service under the Medicaid codes that are utilized in Rhode Island; or under the DHS Medicaid medical codes there are two Current Procedural Terminology (CPT) codes that could be utilized. Craig reported that John Young has received verbal approval that it could be conducted under the CPT codes which creates a larger exposure because there are many more organizations that use the Medicaid medical codes than use the substance abuse codes. Craig stated that they very close to initiating this program and that the White House would like to come to Rhode Island and hold a major event to announce the program. Craig stated that these are the first national codes that have been separately identified to do this kind of work. Lisa Clark mentioned that Medicare has two parallel codes that will be effective January 1, 2008 those Medicare providers can utilize. She stated that their rules and regulations are posted on their physician provider website within the CMS website.

UPDATES FROM DCYF

There was no report from DCYF. Carol Fox introduced Winsome Stone who will be covering the Council meetings from this point forward.

OLD/NEW BUSINESS

Reed Cosper mentioned that his office is being targeted to be consolidated in this year's budget, and he will keep the Council informed of the status of any changes.

Craig Stenning strongly suggested that Rhode Island Housing be invited to attend a Council meeting to present on the Housing First model.

ADJOURNMENT AND NEXT MEETING

There was no further business. Upon motion made and seconded, the meeting adjourned at 10:00 a.m. The next meeting of the Council is scheduled for **Tuesday, January 8, at 1:00 p.m. in the first floor Conference Room 126 at the Barry Hall Building.**

Minutes respectfully recorded and written by:

Mary Ann Nassa
Secretary, Governor's Council on Behavioral Health

Attachment I: Proposed Rule: Medicaid Rehabilitative Services
Attachment II: MHRH Comments on Specific Items in Proposed Rule
Attachment III: HHS Comments on Specific Items in Proposed Rule
Attachment IV: Letter to Louellen M. Rice - Block Grant Implementation Report